

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAYE A. GOSCHA)	
Claimant)	
VS.)	
)	
STATE OF KANSAS)	Docket No. 205,090
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

Claimant requests review of the Award entered by Administrative Law Judge Bruce E. Moore dated December 28, 1999.

APPEARANCES

Claimant appeared by her attorney, R. Douglas Sebelius of Norton, Kansas. The respondent and its insurance carrier appeared by their attorney, Richard L. Friedeman of Great Bend, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The ALJ denied claimant's request for benefits because the Judge found she failed to prove timely written claim and application for hearing. Claimant requests the Appeals Board review those findings. Should the Board determine that claimant served timely written claim upon the respondent and that application for hearing was timely filed, then there are also issues concerning the nature and extent of claimant's disability and what medical benefits are due claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds for the reasons stated therein the Award by the ALJ should be affirmed.

Claimant was injured on January 26, 1988 when she was assaulted by an inmate at the Norton State Hospital where she worked. Following her release from treatment, claimant

returned to work for respondent and continued to work there until the hospital was closed later that year. Her claim for compensation was filed September 11, 1995.

The ALJ found that claimant's September 11, 1995 written claim was untimely. The Appeals Board agrees.

K.S.A. 1987 Supp. 44-520a provides in part:

No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

In the instant case, the respondent filed the required employer's report of accident pursuant to K.S.A. 1987 Supp. 44-557. Accordingly, there is no stay of the time limitations provided by the Act. Claimant did not present any document to the respondent before September 11, 1995 that could be construed as a written claim for benefits and that date is beyond 200 days from the January 26, 1988 date of accident. Claimant's September 11, 1995 filing of the Application for Hearing was likewise beyond the time limits provided by K.S.A. 1987 Supp. 44-534(b) for maintaining a workers compensation proceeding. This claim is, therefore, time barred.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated December 28, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: R. Douglas Sebelius, Norton, KS
Richard L. Friedeman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director